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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Michael Cotton,
9 Plaintiff/Judgment Creditor,
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11 v.
12 Zitterman Bosh & Associates and Damario
13 Turpin,
14 Defendants/Judgment Debtors.

No. CV11-2024 PHX DGC

ORDER

15 Plaintiff Michael Cotton has filed a motion for issuance of a civil arrest warrant
16 against Defendants/Judgment Debtors. Doc. 24. United States Magistrate Judge Steven
17 P. Logan issued a report and recommendation (“R&R”) recommending that the motion
18 be granted. Doc. 30. No objection has been filed, which normally would relieve the
19 Court of its obligation to review the R&R, but the Court has concerns about the requested
20 relief that, at this stage, prevent it from approving the R&R.

21 Judge Logan ordered Defendants to appear for a debtor’s exam in his court on
22 November 6, 2012. Doc. 20. Defendants did not appear or otherwise comply with Judge
23 Logan’s order. As a result, Plaintiff asks the Court to issue a civil arrest warrant to have
24 Defendants taken into custody. The R&R recommends that the Court grant such relief.
25 Doc. 30.

26 The Court has several concerns about the requested relief. Defendants are located
27 in Georgia, not Arizona. *See* Docs. 7, 8. Plaintiff cites no authority for the proposition
28 that a federal district court in Arizona can order the arrest of a person or entity in

1 Georgia. The R&R cites Rule 83 of the Local Rules of Civil Procedure, but does not
2 specify a provision of that rule under which the requested relief may be ordered.

3 The Court held a telephone conference with Plaintiff's counsel on February 27,
4 2013. In response to the Court's questions, Plaintiff's counsel offered to file a
5 memorandum of authorities. The Court agreed, and instructed counsel to file the
6 memorandum with Judge Logan within 30 days of this order. The memorandum should
7 address the following questions:

8 1. What statute or rule authorizes a federal judge in Arizona to order the civil
9 arrest of a person in Georgia?

10 2. Civil arrest may be warranted when a party is in contempt of court, but the
11 party is then brought before the court in which the contempt occurred and the judge is
12 authorized to take such actions as are necessary to remedy the contempt. If the civil
13 arrest warrant is being sought in this case for civil contempt of court, what authority
14 permits a federal judge in Georgia to remedy contempt of a federal court in Arizona?
15 And if Plaintiff is not seeking the civil arrest warrant for contempt of court, under what
16 authority is it sought?

17 3. "The standard for finding a party in civil contempt is well settled: The
18 moving party has the burden of showing by clear and convincing evidence that the
19 contemnors violated a specific and definite order of the court." *Oliner v. Kontrabecki*,
20 305 B.R. 510, 520 (N.D. Cal. 2004) (quoting *F.T.C. v. Affordable Media*, 179 F.3d 1228,
21 1239 (9th Cir.1999)). "The burden then shifts to the contemnors to demonstrate why they
22 were unable to comply." *Id.* Once the moving party has established a prima facie case of
23 contempt, a contemnor may avoid sanctions by demonstrating a present inability to
24 comply with the enforcement order. *United States v. Drollinger*, 80 F.3d 389, 393 (9th
25 Cir.1996). Has a showing of civil contempt been made in this case by clear and
26 convincing evidence? If it has, where will Defendants be afforded an opportunity to
27 show a present inability to comply? If the answer is Georgia, what authority does a
28 federal judge in Georgia have to determine whether a contempt of court occurred in

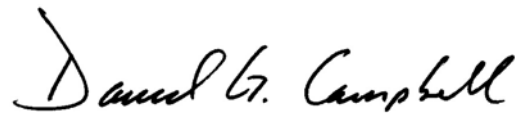
1 Arizona and whether the defendant had the present inability to comply with the Arizona
2 order?

3 4. The motion seeks arrest of Defendant Zitterman Bosh & Associates.
4 Exactly how does one arrest an entity?

5 As these questions suggest, the Court has serious doubts about its ability to order
6 the arrest of Defendants in Georgia. The more appropriate course, it seems, would be for
7 Plaintiff to domesticate the judgment against Defendants in Georgia, obtain an order for
8 them to appear for a debtor's exam in Georgia, and seek contempt remedies in Georgia if
9 Defendants refuse to comply. But the Court will not prejudge this issue. Instead, it will
10 afford Plaintiff's counsel time to respond to these questions before Judge Logan.

11 **IT IS ORDERED** that the R&R (Doc. 30) is not accepted. This matter is
12 remanded to Judge Logan to consider the matters to be addressed by Plaintiff's counsel in
13 30 days

14 Dated this 27th day of February, 2013.

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19 David G. Campbell
20 United States District Judge
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